IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15/10/2004

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THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
AND
THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

CRL.A.No.963 of 2001

1.Yasuddin
2.Nettai Ibrahim @ Ibrahim
3.Kulai Ibrahim @ Ibrahim .. Appellants (A-1 to A-3)

-Vs-

Inspector of Police,
B.1 Bazaar Police Station, Coimbatore. .. Respondent

Criminal Appeal against the judgment of conviction and sentence dated 6.2.2001 in S.C.No.201 of 1999 on the file of the Second Additional Sessions Judge, Coimbatore.

!For appellants : Mr.V.Gopinath, Senior Counsel for
Mr.John Sathyan for A-1
Mr.R.Sankarasubbu for A-2 & A-3

^For respondent : Mr.S.Jayakumar, Addl.P.P.

:JUDGMENT

M.KARPAGAVINAYAGAM, J.

The appellants are A-1 to A-3. They were tried along with A-1 to A-8 for the offences under Sections 147, 148, 149 and 302 IPC for having committed the murder of one Palanisamy @ Kannan. The appellants (A-1 to A-3) alone were convicted for the offences under Sections 148 and 302 IPC. Other accused were acquitted of the charges. Challenging the said conviction, this appeal has been filed by the appellants, namely A-1 to A-3.

2. Short facts leading to the conviction are as follows:

(a) Deceased Palanisamy @ Kannan was a lottery vendor. He belonged to Bharathiya Janatha Party (BJP). He used to canvass for the party during election period.

(b) P.W.1 Muralidharan is a cut-piece cloth vendor. He used to take cut-piece cloths and sell the same by going to various places in Coimbatore. The deceased is his friend. P.W.2 Raja, another friend of the deceased, is running a 'Pani Poori' Stall at Oppanakkar Street.

(c) All the accused persons are the members of a Muslim organization.

On 2.9.1997, the appellants / A-1 to A-3 and three other accused gathered near Masjid colony and talked among themselves about the attack made on some of the Muslims by some Hindus. As a retaliation, they decided to teach a lesson to Hindus by attacking some of the Hindu persons who belong to BJP. They ultimately designed to murder the deceased Palanisamy alias Kannan as a revenge.

(d) On 2.9.1997 at about 7.00 p.m., the deceased Palanisamy @ Kannan, P.W.1 Muralidharan, P.W.2 Raja and one Rajan, gathered and had a chit-chat among themselves in P.W.2's shop at Oppanakkara Street. At about 7.30 p.m., the deceased Kannan left the place to a near-by sewerage channel to answer the first call of nature. At that point of time, all the accused persons, who are Muslims, surrounded the deceased when he came near the lamp-post.

(e) A-5 Mustafa @ Mohammed Mustafa opened a bottle and threw acid on the deceased. A-6 Jinnah @ 'ondrakilo' Jinnah @ Sikander Batcha and one Saleem, caught hold of the deceased. At this stage, A-1 Yasuddin armed with knife, stabbed the deceased on his left buttock and also stabbed twice on the left chest; A-2 'Nettai' Ibrahim @ Ibrahim, armed with knife, stabbed the deceased twice on his left chest; A-3 " Koolai" Ibrahim @ Ibrahim, armed with knife, stabbed the deceased two or three times on his right hand and right arm pit and A-4 Mustafa @ Moosa, armed with knife, stabbed the deceased on his right hand, left and right flanks two or three times. Deceased cried aloud and fell down on receipt of injuries.

(f) P.W.1 Muralidharan and P.W.2 Raja, on hearing the alarm raised by the deceased, rushed to the scene and saw six to seven persons running from the place of occurrence and found the deceased falling down with stab injuries in the scene. Immediately, P.W.1 Muralidharan, P.W.2 Raja, one Ramesh and one Rajan, took the deceased in an auto to Coimbatore Government Medical College Hospital.

(g) At about 7.45 p.m., deceased was admitted in the hospital. P.W.7 Dr.Paramasivam attended the deceased and noted the injuries sustained by him and issued Ex.P-3 accident register.

(h) Thereupon, P.W.1 Muralidharan went to B-1 Bazaar Police Station and gave Ex.P-1 complaint to P.W.19 Sub-Inspector of Police on the same day. P.W.19 registered the case for the offences under Sections 1 47, 148 and 307 IPC. F.I.R. copies and the complaint were sent to Court and higher officials.

(i) On receipt of message, P.W.21 Inspector of Police took up investigation. He came to the scene of occurrence at about 8.30 p.m. and prepared Ex.P-9 observation mahazar and drew Ex.P-27 rough sketch. Then, P.W.21 Inspector of Police rushed to the hospital, examined the deceased and other witnesses and recorded their statements.

(j) Next day, i.e. on 3.9.1997 at about 9.20 a.m., the deceased died at the hospital. On receipt of Ex.P-4 death intimation issued by P. W.8 Dr.Shanmugavelusami, P.W.21 Inspector of Police altered the F.I. R. into one under Section 302 IPC. He went to the hospital and conducted inquest on 3.9.1997 between 11.45 a.m. and 1.45 p.m. During the course of inquest, P.W.1 Muralidharan and P.W.2 Raja were examined. Ex.P-29 is the inquest report. Then, the body was sent for postmortem.

(k) P.W.21 Inspector of Police, thereupon, examined P.Ws.3 to 6, the eye-witnesses and recorded their statements. P.Ws.3 and 4 implicated the culprits in their statements as 'unknown identifiable persons'. P.Ws.5 and 6,

in their statements, gave the names of the accused persons involved in the occurrence.
(l) P.W.10 Dr.Natarajan, on receipt of the requisition, conducted autopsy on 3.9.1997 at about 2.00 p.m. and found 13 stab injuries on the body of the deceased. He issued Ex.P-7 post-mortem certificate and gave an opinion that the deceased would appear to have died of multiple stab injuries.
(m) P.W.21 Inspector of Police took steps to arrest the accused, whose names were given by P.Ws.5 and 6. Fearing arrest, the appellants/A-1 to A-3, on 18.9.1997, surrendered before the Judicial Magistrate, Udumalpet. On coming to know of the same, P.W.21 Inspector of Police filed a petition for Police custody and obtained the same on 2 4.9.1997.
(n) On 26.9.1997, on the confession of A-1, M.O.5 knife was recovered; on the confession of A-2, M.O.8 knife and M.O.11 banian were recovered and on the confession of A-3, M.O.7 knife was recovered. Then, A-1 to A-3 were produced before the Court, which in turn remanded them.
(o) In the meantime, on 27.9.1997, A-5 to A-7 were arrested. Since A-5 sustained acid burn injuries on the hand, he was sent for treatment. P.W.9 Dr.Ravikumar examined A-5 and issued Ex.P-5 accident register. He was treated as an out-patient.
(p) P.W.21 Inspector of Police filed a requisition before the Court on 30.9.1997 for conducting test identification parade with regard to the identity of the appellants/A-1 to A-3 and other accused available then, by P.Ws.3 and 4. Accordingly, P.W.29 Judicial Magistrate-I, Coimbatore sent a letter to the Jail Superintendent for making arrangements to conduct the test identification parade.
(q) On 8.10.1997, P.Ws.3 and 4 were summoned for parade. Both of them identified A-1 to A-3 and the other accused. Ex.P-26 series are the proceedings relating to the identification parade conducted by P. W.20 Judicial Magistrate.
(r) On 9.10.1997, A-4 Moosappa @ Moosa surrendered before the Court. Then, Police custody was given. A-4 gave confession during the Police custody, in pursuance of which, M.O.6 knife was recovered. On 16 .10.1997, A-8 was arrested and remanded to judicial custody.
(s) In the meantime, P.W.21 Inspector of Police was transferred. One Murali, another Inspector of Police took up further investigation. He examined the other witnesses. The material objects were sent for chemical examination. On completion of the investigation, the Inspector of Police filed the charge sheet against the accused for the offences under Sections 147, 148, 149 and 302 IPC.
(t) During the course of trial, on the side of prosecution, P.Ws.1 to 21 were examined, Exs.P-1 to P-29 were filed and M.Os.1 to 11 were marked. Ex.C-1 remand report, relating to A-5 to A-7, was marked as a Court document.
(u) When the accused were questioned under Section 313 Cr.P.C., they merely denied their complicity in the crime in question and stated that a false case had been foisted against them.
(v) On analysing the entire materials available on record, the trial Court convicted the appellants/A-1 to A-3 alone for the offences under Sections 148 and 302 IPC and sentenced each of them to undergo one year rigorous imprisonment with a fine of Rs.1,000/- and life imprisonment respectively. The sentences imposed on the appellants/ A-1 to A-3 were ordered to run concurrently. The other accused were acquitted of the charges.

Hence, this appeal by A-1 to A-3 alone.

3. Mr.V.Gopinath, learned Senior Counsel appearing for the first appellant/A-1, while assailing the impugned judgment, would make the following contentions:
(i) There are four eye-witnesses, namely P.Ws.3 to 6. The evidence of P.Ws.5 and 6 was disbelieved by the trial Court on the ground that Ex.C-1 remand report relating to A-5 to A-7 filed by the Inspector of Police shows that P.Ws.4 and 5 were not examined by Police till Ex.C-1 remand report dated 27.9.1997 was filed and as such, their evidence that they gave statements to Police on 3.9.1997, implicating the accused, cannot be believed.
(ii) Though in the identification parade, P.Ws.3 and 4 identified A-1 to A-3, they failed to establish their identity in Court. Identification of the accused in parade alone, is not the substantive evidence. Therefore, the evidence of P.Ws.3 and 4 cannot be acted upon, in the absence of identification of A-1 to A-3 by them in Court.
(iii) Presence of P.Ws.3 and 4 in the scene of occurrence at the relevant point of time, is highly doubtful. Both of them would state that they knew the deceased very well. Even then, P.Ws.3 and 4 did not take care to inform either Police or the relatives of the deceased. There are no details as to how Police came to know that P.Ws.3 and 4 are the eye-witnesses.
(iv) P.W.3 Mani admits that he knew the deceased for the past four years. P.W.4 Dharmaraj would state that he knew the mother of the deceased. Even then, P.Ws.3 and 4 did not care to inform either the mother or the relatives of the deceased.
(v) According to P.W.20 Judicial Magistrate, the accused, after identification parade was over, informed P.W.20, the learned Judicial Magistrate that they were shown to the witnesses at the Police Station when they were in Police custody. Therefore, identification of the accused in parade is valueless.
(vi) A-1 to A-3 surrendered before the Court on 18.9.1997. Instead of requesting the Court to conduct identification parade, P.W.21 Inspector of Police hastened to file an application for custody and also obtained Police custody and produced the accused before the Court on 2 7.9.1997. Only thereafter, he filed the application requesting for conducting identification parade, which was held only on 8.10.1997. This delay has not been explained. There is no reason as to why Police custody was obtained, even before conducting the identification parade. Since identification parade was conducted subsequent to Police custody, the statement of the accused that they were shown to the witnesses in Police custody, can be accepted.

4. Following are the authorities relied on by Mr.V.Gopinath, learned Senior Counsel appearing for the first appellant/A-1:
(i) 2003 S.C.C. (Cri) 1247 (Mahalakshmi vs. State of M.P.) and
(ii) 2002 S.C.C. (Cri) 1698 (Dhana Yadav vs. State of Bihar).

5. Mr.R.Sankarasubbu, learned counsel appearing for the appellants 2 and 3 / A-2 and A-3, would make the following submissions:
(a) There are material contradictions between the evidence of P.Ws.1 and 3 with reference to the genesis of the occurrence. According to P.Ws.1 and 2, the deceased went to a near-by sewerage for answering the first call of

nature. On the other hand, P.Ws.3 and 4 would state that the deceased was standing near the lamp-post when he was surrounded by the accused persons.
(b) Identification parade had not been conducted in accordance with the procedure, as there are no materials to establish that the other persons who were made to stand along with the accused, were of the same and similar features.
(c) Further, P.Ws.3 and 4 stated that A-4 also was identified by them in the identification parade. This is not factually correct, as A-4 was not arrested till the identification parade was conducted. A-4 surrendered before the Court only on 9.10.1997, subsequent to the conduct of the identification parade. Therefore, their evidence regarding identity of the accused, has to be disbelieved.
6. Following are the decisions relied on by Mr.R.Sankarasubbu, learned counsel appearing for the appellants 2 and 3 / A-2 and A-3 :-
(i) 1994 S.C.C. (Cri) 144 (Choteylal vs. State of U.P.);
(ii) 1994 S.C.C. (Cri) 1424 (Satrughana vs. State of Orissa);
(iii) 1999 S.C.C. (Cri) 378 (Vijayan vs. State of Kerala);
(iv) 1999 S.C.C. (Cri) 1452
(Rajesh Govind Jagesha vs. State of Maharashtra);
(v) 1991 S.C.C. (Cri) 1018
(State of A.P. vs. M.V.Ramana Reddy);
(vi) 1959 M.W.N. Cr. 129 (Kamaraj Goundar vs. State);
(vii) A.I.R. 1961 ALLAHABAD 50 (Anwar vs. State);
(viii) A.I.R. 1981 S.C. 1392 (Wakil Singh vs. State of Bihar);
(ix) A.I.R. 1954 S.C. 4 (Muthuswami vs. State of Madras);
(x) A.I.R. 1945 LAHORE 48 (Sajjan Singh vs. Emperor) and
(xi) 1970 S.C.C. (Cri) 343
(Budhsen and another vs. State of U.P).

7. We have heard Mr.S.Jayakumar, learned Additional Public Prosecutor on the above aspects. He pointed out that there are sufficient materials as against A-1 to A-3 and as such, the appeal has to be dismissed. He relied on the following citations in support of his contentions:
(a) 1996 S.C.C. (Cri) 684 = 1996 (8) S.C.C. 514
(Ramanand Ramnath vs. State of M.P);
(b) 1996 S.C.C. (Cri) 1353
(Mehbub Samsuddin Malek vs. State of Gujarat);

(c) 1993 S.C.C.(Cri) 704 (Thakore Dolji Vanvirji vs. State of Gujarat);

(d) 1974 S.C.C. (Cri) 760 (State of U.P. vs. Sheo Ram);
(e) 1995 (2) CRIMES 473 (Radha Ballabh & Ors. vs. State of U.P);
(f) 1970 S.C.C. (Cri) 343 (Budhsen and another vs. State of U.P);
(g) 2003 S.C.C. (Cri) 1247 (Malkhan Singh vs. State of M.P);
(h) A.I.R. 1976 S.C. 2207 (State of A.P. vs. K.V.Reddy) and
(i) 2001 S.C.C. (Cri) 553 (Daya Singh vs. State of Haryana).

8. We have heard the arguments advanced by learned counsel for the parties at full length and given our anxious consideration to their rival

contentions and also gone through the records.
9. According to prosecution, on 2.9.1997 at about 7.00 p.m., while the deceased Palanisamy @ Kannan was proceeding to a sewerage channel near a lamp-post to attend the first call of nature, A-1 to A-8 surrounded him and some of the accused persons attacked the deceased, giving indiscriminate blows, causing serious injuries by means of dangerous weapons and ran away from the scene. P.Ws.1 and 2, who are the friends of the deceased, then took the deceased to hospital and admitted him. Thereafter, P.W.1 Muralidharan went to Police Station and gave Ex.P-1 complaint, which was registered for the offence under Section 307 IPC. On the next day morning, i.e. on 3.9.1997 at about 9.20 a.m., deceased died at the hospital and consequently, the case was altered into one under Section 302 IPC.
10. P.Ws.1 and 2 who are the friends of the deceased, were examined to speak to the fact of the deceased having been brought to hospital and admitted and then, the lodging of Ex.P-1 complaint by P.W.1 Muralidharan with P.W.19 Sub-Inspector of Police. P.Ws.3 to 6 were examined to speak to the occurrence, as they are the eye-witnesses.
11. Let us now first evaluate the evidence of P.Ws.1 and 2 to have a clear-cut picture about the genesis of the occurrence.
12. P.W.1 Muralidharan was doing the business of selling cut-piece cloths. P.W.2 Raja was running a 'Pani Poori' Stall, situated near the scene of occurrence. According to them, on 2.9.1997 at about 7.0 0 p.m., P.Ws.1 and 2 and one Rajan, along with the deceased Palanisamy, being friends, gathered in front of the said 'Pani Poori' Stall and had a chit-chat. While their conversation was going on, the deceased left the place and proceeded to a near-by sewerage channel to answer the first call of nature. Within a few minutes, both P.Ws.1 and 2 and other friends, heard the crying sound of the deceased and rushed to the scene of occurrence and they saw the deceased falling down on the ground with bleeding injuries and seven or eight persons ran away from the scene. Since the deceased fell down with serious injuries all over the body, P.Ws.1 and 2 and another Rajan, arranged for an auto and took the victim-deceased to the hospital.
13. P.W.7 Dr.Paramasivam, attached to Coimbatore Government Medical College Hospital, would state that he admitted the deceased at about 7.45 p.m. and noted the injuries and issued Ex.P-3 accident register. Ex.P-3 accident register would indicate that the deceased was brought by one Rajan, who was the friend of P.Ws.1 and 2 and the deceased. P.W.7 Doctor was told that the deceased was stabbed by about eight persons at or about 7.30 p.m. at Oppanakkara Street on 2.9.1997.
14. After admission of the deceased in the hospital, P.W.1 Muralidharan went to Police Station and gave Ex.P-1 complaint to P.W.19 SubInspector of Police, who registered the case on 2.9.1997 at about 9.0 0 p.m., for the offences under Sections 147, 148 and 307 IPC. Ex.P-1 complaint and Ex.P-23 F.I.R. registered by P.W.19, as also the evidence of P.W.19 Sub-Inspector of Police, would confirm this aspect.
15. Both P.Ws.1 and 2 never claimed that they saw the attack on the deceased, nor gave any particulars regarding the identity of the accused. As such, the stand taken by P.Ws.1 and 2, both in Ex.P-1 complaint and in their deposition, is that they only took the deceased to hospital, where the deceased was admitted and the case was registered on the complaint of P.W.1 Muralidharan for the offences under Sections 148 and 307 IPC, as the deceased

was alive then. Thus, it is evident that P.Ws.1 and 2, being the friends of the deceased, were not interested in giving the names of the accused, even on suspicion, as they were not sure about the identity of the culprits who attacked the deceased.

16. It is the deposition of P.W.21 Inspector of Police that as soon as he received the F.I.R. from P.W.19 Sub-Inspector of Police, he rushed to the scene and recorded the statements of P.Ws.1 and 2 and also of the deceased. After the death of the deceased, inquest was conducted. Till the inquest was over, neither the statement of the deceased nor the statements of P.Ws.1 and 2 was obtained; or any other witnesses would give any clue regarding the identity of the accused, nor they made an attempt to implicate some person or the other on suspicion.

17. It is clear from the evidence of P.Ws.1 and 2 and on a reading of Ex.P-1 complaint that the deceased, who was brutally attacked by some persons at the scene, was taken to the hospital immediately to save his life and after admission in the hospital, a complaint was lodged in the Police Station by P.W.1 Muralidharan.

18. This aspect of evidence spoken to by P.Ws.1 and 2, has been well corroborated by the evidence of P.W.7 Doctor, who gave treatment to the deceased, as also by the evidence of P.W.19 Sub-Inspector of Police and P.W.21 Inspector of Police.

19. As indicated above, the deceased died only on the next day, i.e. 3.9.1997 at about 9.20 a.m. Ex.P-4 death intimation was received by P.W.21 Inspector of Police at 10.45 a.m. Then, the case was altered into one under Section 302 IPC. Thereupon, he went to the hospital and conducted inquest between 11.45 a.m. and 1.45 p.m. and prepared Ex.P-29 inquest report.

20. A reading of column Nos.9 and 15 of Ex.P-29 inquest report would indicate that the identity of the accused was not known to the investigating officer. However, a conclusion was arrived at from the examination of the witnesses in the presence of Panchayatdars that, in retaliation of the attack made on Muslim persons by Hindus earlier, Muslim persons, with a view to take revenge, murdered the deceased, who was a Hindu and also an office-bearer of BJP.

21. From the above facts, it is noticed that till the inquest was over, the investigating officer was not able to fix the identity of the accused, though the motive for attack was detected.

22. P.Ws.1 and 2, while deposing before the Court, did not make any attempt to improve their version so as to fix the identity of the accused persons. They simply gave details of the admission of the deceased in the hospital and lodging of the complaint in consonance with the stand taken by them in Ex.P-1 complaint and in their earlier statement made to Police during the course of inquest.

23. Evidence of P.Ws.1 and 2 would clearly reveal that as the friends of the deceased, they showed anxiety which reflected their natural conduct in taking immediate steps to take the deceased to the hospital and then to give a complaint to Police. In view of the said conduct of P.Ws.1 and 2, the prosecution has established the genesis of the occurrence as well as the fact that the deceased was attacked at Oppanakkara Street, opposite to the shop at about 7.30 p.m., has been established.

24. Let us now analyse the evidence of the eye-witnesses, namely P.Ws.3 to 6, relating to the occurrence.

25. On a perusal of the evidence of P.Ws.3 to 6, it is seen that the evidence of P.Ws.3 and 4 would stand in a different footing from that of the evidence of P.Ws.5 and 6, the other eye-witnesses. P.Ws.3 and 4 did not know the accused earlier, which necessitated the conduct of identification parade, whereas P.Ws.5 and 6, who knew the accused earlier, gave the details of the names of the accused.
26. According to the prosecution, P.W.3 Subramani and P.W.4 Dharmaraj were examined after the inquest was over, i.e. on the evening of 3.9.1997. They stated that they saw the occurrence as well as the culprits who attacked the deceased. However, they could not give the names of the accused, as they were not known to them earlier. But their specific statement before P.W.21 Inspector of Police was that they could identify them. Accordingly, they identified the accused persons in the parade which was subsequently conducted.
27. Let us first deal with the evidence of P.Ws.3 and 4.

28. The evidence of P.Ws.3 and 4 is being attacked by learned counsel for defence, contending that the conduct of P.Ws.3 and 4 in not informing to Police and others about the occurrence and the fact that the accused were not identified in Court, though they were identified in the parade, would clearly show that their evidence is not trustworthy.
29. With reference to the conduct of P.Ws.3 and 4, it has to be stated at the outset that P.Ws.3 and 4, as soon as they saw the incident in which a Hindu was attacked by Muslims, felt afraid of the consequences, as it would result in a communal commotion in the area and so, they left the place immediately and rushed to their home. According to them, that was the reason as to why they did not think it fit to inform or report to others. This explanation, in our view, can be said to be a plausible one, since it would be natural for them to feel in a tense moment that it would be safe for them to leave the place at once, so that they could avoid their presence in further clash that was likely to happen between Hindus and Muslims.
30. Normally, when the incident took place under the eyes of the public gathering and when everybody in the locality must have come to known about the incident, it cannot be expected that the witnesses who have seen the occurrence, would go on telling each and everybody as to what had happened and as to who are all the assailants. Some witnesses may inform others and some witnesses may rush to Police Station to give complaint. Similarly, some of them would keep quiet for some time to recover from the shock, without telling anybody.
31. As laid down by the Supreme Court in 1993 S.C.C. (Cri) 704 (cited supra), when the occurrence had taken place in a public place, everybody must have come to know of the same and the witnesses cannot be expected to go on telling each and everybody as to what had happened, unless somebody asks them. On this ground, the witnesses cannot be disbelieved.
32. So, the fact that the witnesses neither informed others nor lodged a complaint with Police, cannot be a ground to disbelieve the evidence of P.Ws.3 and 4. On the other hand, a reading of the evidence of P.Ws.3 and 4 as a whole, would indicate that they saw the occurrence and on getting frightened, they went home and only on the next day after the recovery from the shock, they came to the scene and informed Police as to what had happened.
33. While assailing the evidence of P.Ws.3 and 4 relating to their identification in the parade, it is submitted by the learned counsel for the

defence that though P.Ws.3 and 4 identified A-1 to A-3, the appellants herein, in parade, they did not identify them in Court, and as such, their evidence relating to identification of A-1 to A-3 in parade is not substantive. It is further contended that though A-4 did not participate in the parade, as he was later arrested, P.Ws.1 and 2 wrongly deposed before the Court that they identified A-4 also in the parade and as such, the evidence of P.Ws.3 and 4 is to be disbelieved.

34. There is no dispute in the fact that A-4 did not participate in the identification parade. A-1 to A-3 and A-5 to A-8 alone were subjected to the identification parade. Merely because there are some variations in respect of the other accused, we cannot ignore the fact that both P.Ws.3 and 4 correctly identified A-1 to A-3 before P.W.20

Judicial Magistrate.

35. It is contended that A-1 to A-3 though were identified in parade correctly, were not identified in Court. On a reading of the evidence of P.Ws.3 and 4 as a whole, we are unable to persuade ourselves to accept this contention by learned counsel for the defence.

36. P.W.3 would specifically state in chief examination, pointing out A-1 to A-6, who were present in the Court, that he identified them in parade. P.W.4 Dharmaraj also identified A-1 to A-6, who were present in Court and stated that he identified them in the identification parade. In the light of the said evidence, we could not understand as to how it can be contended that the appellants / A-1 to A-3 were not identified in the Court.

37. It is true that the deposition of P.Ws.3 and 4 that they identified A-4 also in the parade, may not be correct, as A-4 was not there in the parade. Merely because P.Ws.3 and 4 wrongly stated that A-4 was also identified in the parade, the same cannot be construed to be a ground for rejecting their entire evidence relating to the identification of the other accused both in parade and in Court.

38. Of course, there are variations in regard to the identification of A-4 to A-8. That was the reason as to why they were acquitted. But, that reason would not apply to the appellants/A-1 to A-3, who were correctly identified both in the parade and in the Court.

39. As held by the Supreme Court in 1996 S.C.C. (Cri) 1353 (cited supra), the ability of the witnesses to remember the face of each and every accused and to identify them at the identification parade as well as in Court, would depend upon various factors.

40. We cannot lay down a straight-jacket formula, wherein it has to be held that identification of some of the accused is wrong, and identification of other accused who were identified correctly, has to be rejected. The Supreme Court in 1974 S.C.c. (Cri) 760 (cited supra) would hold that wrongful identification by one witness, will not affect the correct identification by others.

41. Of course, it is true that P.Ws.3 and 4 did not give specific overt acts as against each of the accused. Both of them made a general statement to the effect that all the persons, including the persons identified by them, surrounded the deceased and some persons caught hold of the deceased and some inflicted injuries with knife.

42. Failure to give specific overt acts in respect of A-1 to A-3, cannot be a ground to discard the evidence of P.Ws.3 and 4, who identified A-1

to A-3 as the persons who participated in the occurrence along with others.
43. Nextly, it is contended that P.Ws.3 and 4 would not have been examined on 3.9.1997, as P.W.1 himself admitted that they were examined only after Police custody. This submission is factually incorrect, as the said admission is not in consonance with the contemporaneous records.
44. According to P.Ws.3 and 4, they were examined on 3.9.1997 in the evening by P.W.21 Inspector of Police. Ex.C-1 remand report dated 27 .9.1997 relating to A-5 to A-7 would indicate that P.Ws.3 and 4 were examined even before Police custody was obtained for A-1 to A-3. Mere fact that the statements of P.Ws.3 and 4 reached Court with a delay, would not give out a ground to contend that P.Ws.3 and 4 would not have been examined on 3.9.1997.
45. If the investigating agency had the intention to implicate the accused falsely, they could have very well recorded the statements of P.Ws.3 and 4 as if they had also given the names of the accused. As a matter of fact, P.Ws.5 and 6, the other two eye-witnesses who gave the names of the accused, were examined on the same day, i.e. on 3.9.1997. There is no difficulty for the investigating agency to record similar statements from P.Ws.3 and 4 and in that event, the investigating agency need not have to endeavour to file application before the Judicial Magistrate for conducting parade for identifying the accused by P.Ws.3 and 4. Therefore, there is no merit in this contention.
46. It is contended that the identification of A-1 to A-3 by P.Ws.3 and 4, cannot be said to be valid, inasmuch as the accused persons complained to P.W.20 Judicial Magistrate that at the time of Police custody of A-1 to A-3, P.Ws.3 and 4 were brought to the Police Station and the accused were shown to them.
47. Strangely, no such suggestion was put to P.Ws.3 and 4 during their cross-examination. On the other hand, it was suggested to them that the photographs of the accused were shown to them and that therefore, they were able to correctly identify the accused and the same was denied.
48. Further, the Supreme Court would hold in 1995 (2) Crimes 473 (cited supra) that when the witnesses identified the accused both in parade and Court, the same cannot be rejected on mere suspicion that the accused might have been shown to witnesses, unless there are good reasons to doubt the proceedings.
49. It is argued on the side of defence that the identification parade was not properly conducted, since the prosecution did not establish that other persons who were made to stand along with the accused in parade, are of the same religion and similar features. There is no basis for this argument. On the other hand, the evidence of P.W.20

Judicial Magistrate and Ex.P-26 series, namely the identification parade proceedings, would clearly disclose that required procedures had been followed in accordance with law. Admittedly, there was no cross-examination of P.W.20 Judicial Magistrate with regard to the said aspect. Therefore, this contention also fails.
50. Much was said about the delay in conducting the identification parade. It is true that A-1 to A-3 surrendered on 18.9.1997 and requisition for conducting parade was made only ten days later. But, it is seen that P.Ws.4 and 5, who were examined earlier, were able to give the names of accused, including A-1 to A-3, the appellants herein. So, on the basis of the

statements of P.Ws.4 and 5, the investigating officer (P.W.21 Inspector of Police) felt it fit to seek the Police custody of A-1 to A-3 to recover the weapons first. On obtaining Police custody, A-1 to A-3 were interrogated and on their confession, M.Os.5,7 and 8 (the knives) were recovered.

51. But, as far as P.Ws.3 and 4 are concerned, P.W.21 Inspector of Police thought it fit to seek for parade, as they stated in their statements that they saw the accused for the first time in the scene of occurrence. In order to confirm the identity, through them, P.W.21 Inspector of Police chose to seek for parade. On that score, there was some delay. In any event, this delay cannot be said to be unusual delay.

52. When there is no unusual delay, the evidence relating to identification of the accused in the parade, cannot be said to be invalid, as laid down by the Supreme Court in 1996 S.C.C. (Cri.) 684 = 1996 (8) S.C.C. 514 (cited supra).

53. Thus, the evidence of P.Ws.3 and 4 who identified A-1 to A-3 in parade, which is evident from the deposition of P.W.20 Judicial Magistrate, as well as in Court, would indicate that they are the truthful witnesses and their evidence can be accepted.

54. Let us now deal with the evidence of P.Ws.4 and 5, the other eye-witnesses.

55. It is submitted that the trial Court itself disbelieved the evidence of P.W.5 Saravanan and P.W.6 Chandra Mohan mainly on the reason that they would not have been examined on 3.9.1997, as Ex.C-1 dated 2 7.9.1997, the requisition for remand, would not refer to the examination of P.Ws.5 and 6 and as such, this Court may also eschew their evidence from consideration.

56. We are unable to countenance the above contention. Merely because the evidence of P.Ws.5 and 6 was disbelieved by the trial Court, it would not dis-entitle this Court, while dealing with the appeal against conviction, from probing into the creditworthiness of the evidence of P.Ws.5 and 6. It is settled law that this Court, as appellate Court, would very well assess the evidence of P.Ws.5 and 6 independently and come to its own conclusion, as the finding by the trial Court with reference to the evidence of P.Ws.5 and 6 is not binding on this Court.

57. The following is the gist of the observations made by the Supreme Court in the decisions reported in (i) Surjan vs. State of Rajasthan (AIR 1956 SC 425), (ii) AIR 1975 SC 1808 (Chellappan vs. State of Kerala), (iii) AIR 1967 SC 1412 (Sher Singh vs. State of U.P.) and (iv) 2001 (9) S.C.C. 528 (Ramji Singh vs. State of Bihar):-

(a) The High Court being the first appellate Court, should record its independent findings on re-appraisal of the evidence in entirety.

(b) The High Court can consider the evidence and weigh the probabilities and can accept the evidence rejected by the lower Court and can reject the evidence accepted by the lower Court.

(c) The High Court can, on its own independent appreciation of the evidence, can come to the independent conclusion.

58. In the light of the said legal situation, if we carefully consider the evidence of P.Ws.5 and 6, we are unable to reject their evidence as unreliable.

59. According to P.W.21 Inspector of Police, P.Ws.5 and 6 were examined on 3.9.1997 between 8.00 p.m. and 9.00 p.m. As noted above, though

P.Ws.3 and 4 were examined in the evening of 3.9.1997, P.W.21 Inspector of Police was not able to get any clue about the identity of the accused, as they were not able to give the names of the culprits. But, only during the examination of P.Ws.5 and 6, on the night of 3 .9.1997, P.W.21 Inspector of Police was able to know the names of the appellants/A-1 to A-3 and the other accused, who participated in the occurrence.

60. Only then, P.W.21 Inspector of Police made arrangements to constitute a special force to arrest the accused persons and accordingly, the special force was deployed to arrest the accused.

61. Only after coming to know of the fact that search for the accused began in full swing, A-1 to A-3 had chosen to surrender before the Court on 18.9.1997. If the defence version to the effect that P.Ws.5 and 6 would not have been examined either on 3.9.1997 or prior to 1 8.9.1997, then there was no occasion for the investigating agency to know about the identity of the culprits. When a special force was deployed to arrest "named accused persons" including A-1 to A-3, they had decided to surrender before Court on 18.9.1997. This would clearly indicate that P.W.21 Inspector of Police came to know of the complicity of A-1 to A-3 in the crime in question, from the statement of P. Ws.5 and 6, and the same must have been recorded and efforts to arrest the accused must have been begun which made the appellants to surrender.

62. It is quite strange to contend that the evidence of P.Ws.5 and 6

is to be discarded merely because the names of P.Ws.5 and 6 were not mentioned in Ex.C-1 remand requisition report dated 27.9.1997. P. W.21 Inspector of Police deposed during his cross-examination that in Ex.C-1 remand report, he mentioned about the examination of some witnesses, even though he examined several witnesses, as he felt unnecessary to refer to all the names of the witnesses in Ex.C-1.

63. There is no reason to reject the said explanation of P.W.21 Inspector of Police, in the light of the fact that as noted above, only when Police searched for A-1 to A-3 on the basis of the information given by P.Ws.5 and 6, they surrendered before the Court on 18.9.1997

as a first batch. In other words, but for the information given by P.Ws.5 and 6, P.W.21 Inspector of Police could not have known about the identity of A-1 to A-3; but for the efforts taken by P.W.21 Inspector of Police to arrest A-1 to A-3 and others, they would not have decided to surrender before the Court. Therefore, the ground for rejecting the evidence of P.Ws.5 and 6 given by the trial Court cannot be countenanced by this Court. 64. As noted above, this Court, as appellate Court, could independently assess the evidence of P.Ws.5 and 6 to find out as to whether they are speaking truth.

65. Let us now analyse the evidence of P.Ws.5 and 6. P.W.5 Saravanan is doing the business of glass-fitting. According to him, he knew both the deceased and the accused. He stated that when he and his friend P.W.6 Chandra Mohan crossed Oppanakara Street to reach Okkadam, they saw the deceased going near the lamp-post for attending the first call of nature and at that time, A-1 to A-8 surrounded the deceased and attacked. He would specifically state that A-1 Yasuddin gave a stab on the left buttock and left chest of the deceased, A-2 Nettai Ibrahim @ Ibrahim attacked the deceased and caused injuries on the right chest and A-3 Koolai Ibrahim @ Ibrahim on the right hand

and right arm pit of the deceased.
66. P.W.6 Chandra Mohan is having a plastic workshop. According to him, he went along with P.W.5 Saravanan in Opanakara Street and they saw the occurrence. He also would depose that A-1 Yasuddin gave a stab with knife on the buttocks of the deceased, A-2 Nettai Ibrahim on the right chest and A-3 Koolai Ibrahim @ Ibrahim on the right shoulder and other parts.
67. Both P.Ws.5 and 6 also stated that when the deceased fell down on receipt of injuries, all the accused ran away from the scene and at that time, one Ramesh and P.W.2 'Pani Poori' Raja came to the scene and took the deceased in an auto to hospital. This would corroborate the evidence of P.Ws.1 and 2.
68. It is to be specially mentioned that the evidence of P.W.6, who knew the accused persons earlier, is unique in respect of his identification of the accused persons, including the appellants/A-1 to A-3 in the Court. While P.W.6 was in box, learned Public Prosecutor before the trial Court asked him as to whether he could identify the accused in Court.
69. As submitted by learned counsel for the defence, the rank of the accused was changed and they were made to stand in a row with the different rank. Even then, P.W.6 correctly identified each and every accused. Relevant portion of the evidence of P.W.6 in relation to the same is as follows:
@md;W ghh;j;j vjphpfs; (,e;j jUzj;jpy; vjphpfis milahsk; fhl;l , aYkh vd;W muR tHf;Fiu"h; nfhhpanghJ vjph;pfs; jug;g[tHf;Fiu"h;fs; milahsk; fhl;Ltjpy; vjphpfis thpiria khw;wp epWj;jp milahsk; fhl;l tif bra;a[k; go nfhhpdhh;fs;/ mjw;F muR jug;gpy; Ml;nrgiz ,y;iy vd;wjpd; mog;gilapy; vjphpfs; thpiria khw;wp epw;FkhW epw;f itj;J vjphpfis milahsk; fhl;l mDkjpf;fg;gLfpwJ)/ jw;nghJ epd;wth;fspy; 3tJ epw;gth; ahRjPd; (A-1)/ 2tJ epw;gth; ftl;il rhFy;. Kjypy; epw;gth; 3tJ epw; gth; bel;il ,g;uhfpk; (A-2). 4tJ epw;gth; $pd;dh (A-6), 5tJ epw;gth; Tis ,g;uhfpk; (A-3). 6tJ K!;jgh (A-5). 7tJ epw;gth; K:rh (A-4). ryPk; vd;gth; ,y;iy/ ,d;bdhUtiu rk;gtj;jpy; ehd; ghh;f;ftpy;iy/ (milahsk; rhpahf brhy;yg;gl;lJ/ vjphpfs; jug;gpy; Vw;Wf;bfhs;sg;gl;lJ)/@

70. Translation of the said evidence of P.W.6 is as follows:

"The accused seen on that day (at this juncture, when the Public Prosecutor asked as to whether the accused could be identified, the defence counsel requested for changing the order of the accused to enable the accused to be identified and on the basis that there is no objection by the prosecution, permission is granted to change the order of the accused for identification and they are made to stand accordingly). Now, out of these standing accused, the person standing thirdly is Yasuddin (A-1); secondly is Kavattai Shakul, firstly is Nettai Ibrahim (A-2), fourthly is Jinnah (A-6), fifthly is Koolai Ibrahim (A-3), sixthly is Mustafa (A-5), seventhly is Moosa (A-4). Saleem is not available. I did not see another person at the time of occurrence. (Identification is made correctly. It is accepted by the defence)."

71. From a reading of the evidence of P.Ws.5 and 6 as a whole, it is clear that they felt apprehensive and due to attack made on a Hindu by Muslims, the entire area was surcharged with tension. Only on the night of next day, i.e. on 3.9.1997 at about 8.00 p.m., that too after coming to know that the deceased died at the hospital, they went to Police Station and gave a statement. According to them, they saw the occurrence in the scene clearly,

as there was visible light through the electric lamp-post, which was burning at that time.

72. The evidence of P.Ws.5 and 6, would in a way corroborate the evidence of P.Ws.3 and 4. The totality of the circumstances relating to the occurrence has been clearly brought out by the evidence of P. Ws.3 to 6, P.W.7 Doctor who admitted the deceased at the hospital and P. W.10 Doctor, who conducted post-mortem.

73. As per the evidence of P.W.21 Inspector of Police who obtained the Police custody for the appellants/A-1 to A-3, he recorded their confession and recovered M.O.5 knife, M.O.7 knife and M.O.8 knife, which were used for the commission of offence. As per Ex.P-8 Serologist' s report, the weapons--M.Os.7 and 8 (knives) contained blood and the group of the same tallied with that of the group of the deceased.

74. Thus, it is clear that there are sufficient materials to show that the appellants/A-1 to A-3 along with others, participated in the brutal attack made on the deceased in the public bazaar, inflicting serious injuries on the vital parts of the body of the deceased, which resulted in the death of the deceased at the hospital.

75. As a last submission, Mr.Sankarasubbu, learned counsel appearing for A-2 and A-3 would contend that on the date of occurrence, namely on 2.9.1997, A-2 and A-3 were juvenile and as such, they cannot be sentenced to undergo the life imprisonment.

76. This point has never been raised either before the trial Court, nor in the memorandum of appeal before this Court. Further, no application has been filed before this Court seeking permission to adduce materials to establish that A-2 and A-3 were juvenile. Therefore, this contention is rejected.

77. In view of the foregoing discussion, we are constrained to hold that the conviction and sentence imposed on the appellants/A-1 to A-3

are perfectly justified. As such, we do not find any merit in the appeal and the same is accordingly dismissed, confirming the conviction and sentence imposed on the appellants/A-1 to A-3.

Index: Yes

Internet: Yes

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To
1. The II Additional Sessions Judge,
Coimbatore.

2. -do- through Principal District &
Sessions Judge, Coimbatore.
3. Judicial Magistrate-5, Coimbatore.
4. -do- Chief Judicial Magistrate, Coimbatore.
5. Inspector of Police,

B-1 Bazaar Police Station, Coimbatore.
6. Pubic Prosecutor, High Court, Madras.
7. District Collector, Coimbatore.
8. The Director General of Police,
Mylapore, Chennai-4.

9. The Superintendent, Central Prison,
Coimbatore.

10.The Superintendent, Central Prison,
Salem.